***United States Court of Appeals***

***for the Second Circuit***

# APPELLANT'S BRIEF & APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
JUL 11 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

United States Court of Appeals
FOR THE SECOND CIRCUIT

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77-7194

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ELI RAITPORT,
Plaintiff-Appellant

v.

GENERAL ELECTRIC COMPANY, WESTINGHOUSE CORP., RADIO CORPORATION OF AMERICA, AND WHIRLPOOL CORP.,
Defendants-Appellees.

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Appeal from Order of U.S. Distric Court for the Southern District of New York dismissing the action as of 74 Civ. 2123 (CLB)

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BRIEF OF Plaintiff-Appellant

# BRIEF + APPENDIX

Eli Raitport
1807 Mower str.,
Phila., Pa., 19152
PI2-8434

July 8, 1977

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

ELI RAITPORT
appellant

vs.

GENERAL ELECTRIC COMPANY, ET AL 77-7194

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AFFIDAVIT OF SERVICE

I, hereby undersigned, Eli Raitport, certify that a true and correct copy of the document herein has been served on all defendants-appellees by mailing it to its attorneys on record, properly wrapped postage prepaid, first class and addressed to the offices of the attorneys as shown below, on July 8, 1977

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Eli Raitport

ELI RAITPORT
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DATED: JULY 8, 1977

Sworn to and subscribed before me
this 8th day of July 19 77

Ruth Paller, Notary

RUTH PALLER
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires August 19, 1978

## CITATIONS OF STATUTES


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## CITATIONS OF RULES


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## STATEMENT OF JURISDICTION

Jurisdiction of this is conferred pursuant 28 USC 1291

## QUESTION PRESENTED

Whether dismissal of action in U.S. District Court, while failing to comply with Rule 41(b) in so far as writing an opinion stating finding of facts and conclusion of law, is legal?

## PRELIMINARY STATEMENT

This is an appeal from Order of the U.S. District Court for the Southern District of N.Y. by judge Charles L. Brieant, dismissing the action by judgement as of March 9, 1977. Notice of appeal was filed on April 1, 1977.

## STATEMENT OF PERTINENT FACTS

It is presumed that this honorable Court is allready well familiar with this appellant since in the last three years it has dismissed at least 4 appeals of this appellant, and in which very volumenous briefs were filed, and whereas the substances of the law suits are similar; therefore appellant shall omit description of the parties.

Appellant filed a complaint alleging inter alia violations of anti-trust laws restraining trade. Although the complaint was filed on May 16, 1974 no discovery has begun as yet, because of appellant's financial condition. Appellant requested the court to pay for discovery under authority of 28 USC 1915(b) and (c). Appellant requested an order for the government to lend appelant money needed for discovery on collateral of stock appellant pos-

sesses. Appellant argued that since purpose of the federal courts is to vindicate laws of Congress through litigations, the latter becomes an indispensible part of judiciary system and its financing is contemplated in Article III of the U.S. Constitution parallel with carpets and furniture and other accessories for the courtrooms and offices.

Secondly, appellant argued that since financing of an indigent plaintiff's suit is at Common Law since year 1495,[1] discovery is included as an indispensible matter of complex litigation in the modern world.

Thirdly, Appallant argued that this litigation parallel with being anti-trust suit is an indispensible part of the task of Research and Development prescribed by the Congress in statutes 15 USC 272(f) 1950; 42 USC 1862 (b) 1972; 42 USC 1857 (b); 42 USC 1862 (e); 42 USC 1900; 42 USC 2825 (a) and 42 USC 3253, therefore the said statutes providing the authority for funding the discovery of this suit.

Fourthly, appellant argues that statutes 42 USC 2701 and 42 USC 2809 providing authority for granting appellant's request.

District court denied the motions, and denied motion for permission to appeal pursuant to 28 USC 1915. Appellant moved this Court for leave to appeal pursuant Rule 24 FRAppP. This court denied; appellant petioned the Supreme Court for certiorari, but at no avail.

The district court called for a pretrial conference on Feb.25, I977,9.I5 a.m. Appellant arrived at the court room at 9.50, mistakenly believing it was schduled for I0.I5 a.m. He was advised that the case was dismissed, and the appeal follows. The district court did not file an opinion.

ARGUMENT

The district court emphatically violated Rule 4I (b) FRCP, which requires to make finding of fact and conclusion of law in event of involuntary dismissal. District court may not dispence with this Rule. The Supreme Court made clear that writing an opinion is the check-proof whether justice has been done. Hence, the expression of court's opinion in writing is an integral part of the purpose of the court, an integral part of doing justice.

> "Judges will give more careful consideration to the problem if they are required to state not only the end result of their industry, but the process of which they reached it." U.S. v. Merz, I964, 84 S.Ct. 639,643 376 U.S. I92, I99, II L.Ed. 2d 629.
>
> "For, as every judge knows, to set down in precise words the facts as he finds them is the best way to avoid carelessness in the discharge of that duty: Often a strong impression that on the basis of evidence, the facts are thus-and-so gives way when it comes to expressing that impression on paper." U.S. v. Forness, C.C.A. 2d, I942, I25 F. 2d 928, 942( per Frank J.) certiorari denied 62 S.Ct. I@93, 3I6 U.S. 694, 86 L.Ed. I764.
>
> "Purpose of this rule concerning findings is to require the judge to formulicate and articulate facts and con-

clusions in course of this consideration and determination of case and as part of his decision making process reviewing judge himself may be satisfied that he has dealt fully and properly with all issues in case before he decides it and so that parties involved and decision when it is made." Roberts v. Ross, (1965), 344 F.2d 747.

Therefore appellant respectfully urges that basic Due Process of Law has been violated if an opinion has not been written. Paradoxically, there is nothing on the record showing any facts and/or argument of the defendants below to support a motion for dismissal. Nothing more need to be said.

RESPECTFULLY SUBMITTED,

Eli Raitport

ELI RAITPORT

I807Mower Street

Philadelphia, Pa., I9I52

DATED: July 7,I977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S. D. OF N. Y.

ELI RAITPORT,

Plaintiff,

- against -

GENERAL ELECTRIC CORPORATION, WESTINGHOUSE CORPORATION, WHIRLPOOL CORPORATION and RCA CORPORATION,

Defendants.

74 Civ. 2123 (CLB)

JUDGMENT

Defendants Westinghouse Electric Corporation, RCA Corporation, Whirlpool Corporation and General Electric Company having moved at a hearing held before the Court, The Honorable Charles L. Brieant presiding, on February 25, 1977 to dismiss plaintiff's action on the grounds of failure to prosecute, failure to grant discovery in accordance with the Federal Rules of Civil Procedure and the directives of the Court and failure of plaintiff to maintain the lawsuit in good faith, and the Court having granted said motion, it is hereby

ORDERED, ADJUDGED AND DECREED that the action is dismissed on the merits with prejudice and that defendants recover their costs to be taxed.

New York, New York
March 4, 1977

Charles L. Brieant

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JUDGMENT ENTERED